

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
LESLIE DICK WORLDWIDE, LTD. and LESLIE DICK,

Plaintiffs,

- against -

GEORGE SOROS, SOROS FUND MANAGEMENT
LLC, SFM MANAGEMENT, LLC, CONSECO, INC.,
VORNADO REALTY TRUST, GERMAN AMERICAN
CAPITAL, CORP., DEUTSCHE BANK, AG., EASTDIL
SECURED, LLC, HARRY MACKLOWE, FIG, LLC,
CERBERUS CAPITAL MANAGEMENT, LP, LAZARD
FRERES & CO., LLC, KIRKLAND & ELLIS, LLP,
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
LLP, CARMEL FIFTH, LLC, 767 MANAGER, LLC,
DONALD J. TRUMP and John Does "1" through "10",

Defendants. :
:
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ELECTRONICALLY FILED

ECF CASE

Civil Action No. 08 CV 7900
(BSJ) (THK)

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ALFRED D. LERNER, being duly sworn, deposes and says:

1. I am counsel to PHILLIPS NIZER LLP. I make this affidavit in opposition to the motion of the plaintiffs to disqualify my firm from representing Donald J. Trump or 767 Manager, LLC in this matter. I have knowledge of the facts set forth herein.

2. On or about the end of February, 2008, I was asked by Perry Galler, our firm's managing partner, to review the record and briefs on appeal in an action captioned *Leslie Dick Worldwide, Ltd. and Leslie Dick against Macklowe Properties, Inc., et al.*, Index No. 600222/06,

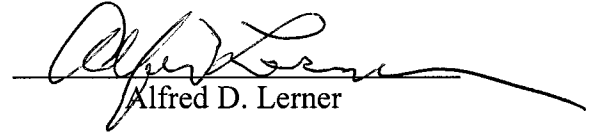
which was then on appeal and awaiting oral argument in the Appellate Division, First Department and to consult with Plaintiffs-Appellants' attorney of record, Robert Hantman, Esq. with respect to his planned oral argument of that appeal. At no time did Phillips Nizer LLP represent the plaintiffs herein on that appeal or write one word of their briefs. I did what I was asked to do and met with Mr. Hantman on two occasions. My recollection is that Mr. Dick sat in on one of our meetings, but said nothing of substance.

3. The only materials which were provided to me were the Record on Appeal and the briefs of the parties, all of which were returned to Mr. Hantman at or shortly after our last meeting on April 8, 2008. I have no remaining file.

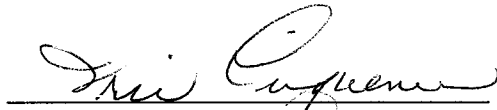
4. I have read the affidavit of Leslie Dick sworn to January 26, 2009. I never received any confidential information from Mr. Dick, Mr. Hantman or from anyone at Phillips Nizer LLP regarding anything referenced in that affidavit. There were references in the Record on Appeal to the alleged dispute between Donald J. Trump and Consecro (not with Mr. Dick) but the Record on Appeal is a public record, not a confidential communication. Other than seeing the reference in the record on Appeal, I have no information from any source about that alleged dispute.

5. With respect to paragraph 6 of Mr. Dick's affidavit, it is highly unlikely that anyone from Phillips Nizer LLP would have told Mr. Dick that we wanted to represent him if the decision were reversed by the Appellate Division, since I had told Mr. Galler after my review, as well as Mr. Hantman, that I did not think that plaintiffs' chances of a reversal on appeal were good. Having sat on the First Department for eight years, I felt that I had a good sense of plaintiffs' chances of a reversal. Finally, with respect to paragraph 8 of Mr. Dick's affidavit, I never heard any "sensitive strategic information about how we would handle the State lawsuit, both on appeal and upon reversal, for example, in adding Trump as a defendant..." from anyone.

I certainly would have reacted immediately to an alleged suggestion of adding Donald J. Trump as a defendant, since I knew that he was then a client of our office in a pending litigation.


Alfred D. Lerner

Sworn to before me this
4th day of February, 2009.


Notary Public

IRIS CINQUEMANI
Notary Public, State of New York
No. 01C14663036
Qualified in Queens County
Certificate Filed in New York County
Commission Expires September 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that I arranged for the annexed affidavit of Alfred D. Lerner to be electronically filed on February 9, 2009, thereby serving all parties of record.

Dated: New York, New York
February 9, 2009

s/ George Berger (GB 8924)